No. 14-1382

In The
[S]reme Court of the United States

AMERICOLD LOGISTICS, LLC, AND
AMERICOLD REALTY TRUST,

Petitioners,

v.

CONAGRA FOODS, INC., AND
SWIFT-ECKRICH, INC.,

Respondents.

ON WRIT OF CERTIORARI
[T]HE UNITED STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT

[B]IEF OF WINSTON WEN-YOUNG WONG AS [A]MICUS CURIAE IN SUPPORT OF PETITIONERS

[W]. STOUTENBURG
[C]ounsel of Record
[J]OHN T. HEISER
[D]AY STOUTENBURG
[G]ARDS LLP
[3]7th Street
[N]ew York, N.Y. 10022
[2]12-9880
[j]heiser@dsglaw.com

DANIEL S. WEINBERGER
GIBBONS P.C.
One Pennsylvania Plaza
37th Floor
New York, N.Y. 10119
(212) 613-2000
dweinberger@gibbonslaw.com

Counsel for Amicus Curiae

Dated: November 30, 2015

[T]HE LEX GROUP[DC] • 1825 K Street, N.W. • Suite 103 • Washington, D.C. 20006
[(2]02) 955-0001 • (800) 856-4419 • Fax: (202) 955-0022 • www.thelexgroup.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

STATEMENT OF INTEREST 1

INTRODUCTION AND SUMMARY OF ARGUMENT 3

ARGUMENT 6

I. TRADITIONAL TRUSTS ARE DIFFERENT FROM STATUTORY TRUSTS IN KEY RESPECTS 6

A. Born in Equity, a Traditional Trust is a Fiduciary Relationship with Respect to Property, Not an Artificial Entity Under State Law 9

B. Most Modern Statutory Trusts, Including Americold, Are Separate Legal Entities Under State Law 16

II. THE COURT SHOULD HOLD THAT DIVERSITY JURISDICTION IN A SUIT BY OR AGAINST A TRADITIONAL TRUST IS DETERMINED BY THE CITIZENSHIP OF ITS TRUSTEE 18

A. A Trust Is Not A "Citizen" of a State in Its Own Right 19

B. The *Carden* Rule to Determine Citizenship Applies Only to Artificial Entities That Are Creatures of and Exist Under State Law, Not to Traditional Trusts 20

C. *Navarro* Controls the Diversity Analysis for a Traditional Trust.....31

D. Practical Considerations Dictate That Diversity of Citizenship in a Suit by or Against a Traditional Trust Must Be Determined by the Citizenship of the Trustee 32

CONCLUSION.....34

APPENDIX:

Will of Yueh-Lan Wang with Certified Translation dated May 31, 2001 .....1a

TABLE OF AUTHORITIES

Page(s)

CASES

Angel v. Bullington,
330 U.S. 183 (1947) 28

Attorney Gen. v. Webster,
20 Eq. 483 (1875) 7

Barham v. Toney,
No. CIV-14-388-JHP, 2015 U.S. Dist. LEXIS 107831 (Aug. 17, 2015) 19, 31

Bonnafee v. Williams,
44 U.S. (3 How.) 574 (1845) 18

Busby v. Elec. Utils. Emps. Union,
323 U.S. 72 (1944) 29

Carden v. Arkoma Associates,
494 U.S. 185 (1990) ..... *passim*

Chapman v. Barney,
129 U.S. 677 (1889) 24

Conagra Foods v. Americold Logistics, LLC,
776 F.3d 1175 (10th Cir. 2015) 5, 22

Davis v. United States,
495 U.S. 472 (1990) 10

E.R. Squibb & Sons, Inc. v. Accident & Cas. Ins. Co.,
160 F.3d 925 (2d Cir. 1998) 27

Emerald Investors Trust v. Gaunt Parsippany Partners,
492 F.3d 192 (3d Cir. 2007) 21, 22

Erie Railroad Co. v. Tompkins,
304 U.S. 64 (1938).....28, 29, 30

Fidelity Trust Co. v. BVD Assocs.,
492 A.2d 180 (Conn. 1985) 26

First Union Nat'l Bank v. Pictet Overseas Trust Corp., Ltd.,
351 F.3d 810 (8th Cir. 2003).....16

Go Fast Sports & Bev. Co. v. Buckner,
No. 08-cv-01527,
2008 U.S. Dist. LEXIS 65754
(D. Colo. July 23, 2008).....20

Great Southern Fire Proof Hotel Company v. Jones,
177 U.S. 449 (1900).....24, 25

Hanna v. Plumer,
380 U.S. 460 (1965).....28, 29, 30

In re General Motors Corp. Dex-Cool Prods. Liability Litig.,
241 F.R.D. 305 (S.D. Ill. 2007) 28

Jacobs v. Weinstein,
370 S.E.2d 860 (N.C. Ct. App. 1988) 15

Larson v. Sylvester,
185 N.E. 44 (Mass. 1933) 15

Law v. NCAA,
167 F.R.D. 464 (D. Kan. 1996) 29, 30

Limouze v. M.M. & P. Maritime Advancement, Training, Educ. & Safety Program,
397 F. Supp. 784 (D. Md. 1975) 15

Marshall v. Balt. & Ohio R.R. Co.,
47 U.S. (16 How.) 314 (1854) 14

Matter of Jacobs,
373 S.E.2d 863 (N.C. 1988) 15

Moor v. County of Alameda,
411 U.S. 693 (1973) 19

Morrissey v. Comm'r,
296 U.S. 344 (1935) 5, 8

N. Sec. Ins. Co. v. Doherty,
987 A.2d 253 (Vt. 2009) 15

Nat'l Bank of Washington v. Mallery,
669 F. Supp. 22 (D.D.C. 1987) 30

Navarro Savings Association v. Lee,
446 U.S. 458 (1980) ..... *passim*

NFS Servs., Inc. v. Dorchester Trust,
78 Civ. 4758, 1979 U.S. Dist. LEXIS 11052
(S.D.N.Y. July 13, 1979) 14

Peterson v. Hopson,
29 N.E.2d 597 (1940) 17

Plasteel Prods. Corp. v. Eisenberg,
170 F. Supp. 100 (D. Mass. 1959), *aff'd*,
271 F.2d 354 (1st Cir. 1959) 15, 32

Puerto Rico v. Russell & Co.,
288 U.S. 476 (1933).....25

Re Scott,
[1948] S.A.S.R. 193.....13

Riddle v. Whitehill,
135 U.S. 621 (1890).....25

Roby v. The Corporation of Lloyd's,
796 F Supp. 103 (S.D.N.Y. 1992) 29

Shady Grove Orthopedic Assocs., P.A. v.
Allstate Ins. Co.,
559 U.S. 393 (2010).....30

Taylor v. Davis' Adm'x,
110 U.S. 330 (1884).....14

Thales Alenia Space Fr. v.
Thermo Funding Co., LLC,
989 F. Supp. 2d 287 (S.D.N.Y. 2013) 16, 21, 33

Trustees of Dartmouth College v. Woodward,
17 U.S. (4 Wheat.) 518 (1819) 24

United Mine Workers v. Coronado Coal Co.,
259 U.S. 344 (1922) 25, 26, 30

United Steelworkers of America v.
R.H. Bouligny, Inc.,
382 U.S. 145 (1965) 25, 26

Wahl v. Schmidt,
138 N.E. 604 (Ill. 1923) 32

Yueh-Lan Wang ex rel. Wong v.
New Mighty U.S. Trust,
841 F. Supp. 2d 198 (D.D.C. 2012) 2, 5

STATUTES

28 U.S.C. § 1652 30

28 U.S.C. § 1332(a)(1) 4

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28 U.S.C. § 2072(b) 30

Colo. Rev. Stat. § 15-10-201(5) (2013) 33

D.C. Code § 19-1304.05 (2015) 33

D.C. Code §§ 29-1201.01 *et seq.* (2015) 17

Del. Code Ann. tit 12, §§ 3801-3863 (2015) 16

Del. Code Ann. tit. 12, § 3810(a)(2) 17

Ky. Rev. Stat. Ann. §§ 386A.1-010 *et seq.* (LexisNexis 2015).....17

Mass. Gen. Laws ch. 182, § 6.....17
Md. Code Ann., Corps. & Ass'ns § 8-102 (LexisNexis 2015).....17

UNIFORM STATUTORY TRUST ENTITY ACT § 302 17

RULES

Fed. R. Civ. P 17(b) 29, 30

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STATEMENT OF INTEREST[1]

Amicus Dr. Winston Wen-Young Wong, OBE[2] ("Dr. Wong") is the eldest son of the late Yung-Ching Wang ("Y.C.") and is the sole legatee of the will of the late Yueh-Lan Wang ("Yueh-Lan"), to whom Y.C. was married for 72 years until his death.

Y.C. was the founder of Formosa Plastics Group, one of Taiwan's biggest and most profitable manufacturing conglomerates with annual sales of over $60 billion and operations in five countries, including the United States. Y.C. died on October 15, 2008 in New Jersey. In the year of his death, *Forbes* magazine ranked him the 178th wealthiest person in the world with a net worth of up to $6.8 billion, though it is estimated that his estate should have been valued in excess of $17 billion. Y.C. was celebrated as the true "son of Taiwan" in a state

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1 *Amicus* submits this brief pursuant to Supreme Court Rule 37.3. Counsel of record for all parties consented to the filing of this brief. The parties' letters of consent have been filed with the Clerk of the Court together with this brief. Pursuant to Supreme Court Rule 37.6, *amicus* states that no party or counsel for a party authored or paid for this brief in whole or in part, and no person other than *amicus* or his counsel made a monetary contribution to fund the preparation or submission of this brief.

2 Dr. Wong is a Taiwanese entrepreneur, scientist and philanthropist, and principal founder of the GRACE THW Group, where he has served as Chairman and Chief Executive Officer since 1996. Dr. Wong received a Ph.D. in Physics from Imperial College London and was recently named an Officer of the Most Excellent Order of the British Empire in recognition of his longstanding contributions to education and research and to UK and Taiwan education relations.

funeral attended by Taiwan's President Ying-jeou Ma and several thousand people.

A few months after Y.C.'s death, Dr. Wong learned that the vast majority of his father's wealth had been transferred to various trusts, both in offshore jurisdictions and in the United States, without Yueh-Lan's consent and in apparent violation of Taiwan civil law. One such trust, New Mighty U.S. Trust—a traditional trust declared for beneficiaries under the laws of the District of Columbia—holds approximately $2 billion in assets and cash.

Yueh-Lan, acting through her attorney-in-fact Dr. Wong, commenced suit in 2010 in the United States District Court for the District of Columbia to account for and recover the property that was transferred to New Mighty U.S. Trust without her consent. Because of the uncertainties surrounding the status and capacity of a "trust," as well as the divergence among the lower courts as to the issue presently before the Court, the action named New Mighty U.S. Trust, its sole trustee and one of its beneficiaries as defendants. The case, *Yueh-Lan Wang, by and through her attorney-in-fact, Winston Wen-Young Wong v. New Mighty U.S. Trust et al.*, No. 10-CV-1743, was dismissed by the district court on January 27, 2012 for lack of diversity jurisdiction based upon the "citizenship" of New Mighty U.S. Trust. 841 F. Supp. 2d 198 (D.D.C.). Yueh-Lan appealed to the United States Court of Appeals for the District of Columbia Circuit.

Yueh-Lan died on July 1, 2012, before briefing on her appeal had commenced. Yueh-Lan's will stated that even though Dr. Wong was not her biological child, he nevertheless treated her "as his natural birth mother" for which she was "deeply touched and grateful." (Appendix.) Yueh-Lan's will did not name an executor and, consequently, her appeal has been held in abeyance since late 2012 during the pendency of proceedings in Taiwan to appoint an executor. After three years of legal proceedings in Taiwan, three individuals were appointed joint executors of Yueh-Lan's will. On September 23, 2015, the executors moved to be substituted for Yueh-Lan in the appeal. That motion remains pending as of the filing of this brief.

Dr. Wong submits this *amicus* brief to draw the Court's attention to a critical distinction between a "traditional trust" and a "statutory trust," and, ultimately, to demonstrate that diversity of citizenship in a suit by or against a traditional trust is determined solely by the citizenship of its trustee.

INTRODUCTION AND SUMMARY OF ARGUMENT

The English legal historian, Frederic William Maitland, wrote, "[i]f we were asked what is the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence I cannot think that we should have any better answer to give than this, namely. the development from century to century of the trust

idea." *The Unincorporate Body*, *in* 3 THE COLLECTED PAPERS 272 (Herbert A.L. Fisher ed., 1911). The Court is called upon now to fit that ancient and celebrated device – the "trust" – within the framework of its diversity jurisdiction jurisprudence.

The diversity statute vests in the federal district courts original jurisdiction over all civil actions where the matter in controversy exceeds $75,000 and is between "citizens of different States" or "citizens of a State and citizens or subjects of a foreign state[.]" 28 U.S.C. § 1332(a)(1) & (2) (2015). The specific question presented by Petitioners is whether "the citizenship of a trust for purposes of federal diversity jurisdiction [is] based on the citizenship of the controlling trustees, the trust beneficiaries, or some combination of both?" Pet'rs' Brief at i (Nov. 23, 2015).

Petitioners, including Americold Realty Trust ("Americcld"), have persuasively argued that, for diversity purposes, the "citizenship of a trust" should be determined solely by reference to the citizenship of its trustee. *See id. generally*. Should the Court, nevertheless, determine that diversity jurisdiction in the case at bar depends on the citizenship of the beneficiaries of Americold, the Court should expressly limit its holding to the specific type of trust at issue in this case, *i.e.*, a statutory business trust that is a legal entity under state law. The Court should distinguish between a statutory trust that is a legal entity under state law and a traditional trust, which is not, and hold that diversity of citizenship in a suit by or against a traditional trust is determined solely by reference to the citizenship of its trustee.

The majority of lower courts that have addressed the issue raised by Petitioners have held that, under the Court's decision in *Navarro Savings Association v. Lee*, 446 U.S. 458 (1980), the "citizenship of a trust" is determined by the citizenship of its trustee. *See* Pet. for Writ of Cert. 19-21 (May 15, 2015) (collecting cases). The court below, however, and a minority of the courts that have encountered this issue, have held that under the Court's decision in *Carden v. Arkoma Associates*, 494 U.S. 185 (1990), the "citizenship of a trust" is determined by the citizenship "'of all the entity's members.'" *Conagra Foods v. Americold Logistics, LLC*, 776 F.3d 1175, 1176 (10th Cir. 2015) (quoting *Carden*, 494 U.S. at 195); *see also* Pet. for Writ of Cert. 27-33 (citing cases, including the district court decision from which Yueh-Lan appealed, *Yueh-Lan Wang ex rel. Wong v. New Mighty U.S. Trust*, 841 F Supp. 2d 198 (D.D.C. 2012)).

The fatal flaw in the decisions of those courts that have relied on *Carden* is the incorrect assumption that all trusts are "artificial entities" under state law. In fact, under the common law and the laws of the Several States, a "traditional" or "ordinary" trust—which is an express trust whose primary purpose is to hold and conserve property. *see* 13 AM. JUR. 2D *Business Trusts* § 6 (2015); *Morrissey v. Comm'r*, 296 U.S. 344, 357 (1935)—is not an artificial entity with a separate legal existence. 76 AM. JUR. 2D *Trusts* § 3 (2015). Rather, a traditional trust is merely a fiduciary relationship with respect to property. *Id.* It is not an artificial "person" in the eyes of the law; it cannot, and does

not, own anything; and it lacks capacity to sue or be sued. *See id.*

For purposes of diversity jurisdiction, then, a traditional trust is a non-existent, nominal party to which the *Carden* rule does not apply, and the Court must instead look to the real party to the controversy, which, as the Court held in *Navarro*, is the trustee when "he possesses certain customary powers to hold, manage, and dispose of assets for the benefit of others." 446 U.S. at 464.

Accordingly, in a suit by or against a traditional trust, it is the trustee's citizenship that determines whether there is diversity of citizenship among the parties.

ARGUMENT

I. TRADITIONAL TRUSTS ARE DIFFERENT FROM STATUTORY TRUSTS IN KEY RESPECTS

The "trust" is "an 'institute' of great elasticity and generality: as elastic, as general as contract." FREDERIC W MAITLAND, EQUITY 23 (A. H. Chaytor & W J. Whittaker eds., 2d ed., revised 1936). "The purposes for which we can create trusts are as unlimited as our imagination. There are no technical rules restricting their creation. The trust can be and has been used to accomplish many different purposes." 1 AUSTIN W SCOTT, WILLIAM F

FRATCHER & MARK L. ASCHER, SCOTT & ASCHER ON TRUSTS § 1.1 (5th ed. 2006).

A common trust purpose is to preserve wealth for the trust creator's family. *Id.* "The trust originated at the end of the Middle Ages as a means of transferring wealth within the family, and the trust remains our characteristic device for organizing intergenerational wealth transmission when the transferor has substantial assets or complex family affairs." John H. Langbein, *The Secret Life of the Trust: The Trust as an Instrument of Commerce*, 107 YALE L.J. 165, 165 (1997). Trusts also have long been used to provide support to charitable purposes and organizations, *see* GEORGE W. KEETON, THE MODERN LAW OF CHARITIES 1-2 (1962) (tracing the origin of perpetual charitable trusts to the ecclesiastical courts of the medieval period); *Attorney Gen. v. Webster*, 20 Eq. 483, 489-90 (1875) (M.R.) (concerning a charitable trust declared in 1585); *In re Stoddard* (App. 1622), Toth. 31, *reprinted in* GEORGE DUKE, THE LAW OF CHARITABLE USES 81 (1676), and to provide support to associations whose purposes are "of a social, rather than a charitable, character." 1 SCOTT ET AL., *supra* p.7, § 1.1. These types of express trusts[3] are typically characterized as "traditional" or "ordinary"

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[3] An "express trust" is one which arises out of a manifestation of an intention to create it. William F. Fratcher, *Property & Trust*, *in* 6 INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW § 11-23 (Frederick H. Lawson ed. 1973). It can be distinguished from a resulting trust, which arises from conduct that is "deemed by the rules of equity to be equivalent to a manifestation of an intention to create it[,]" and a constructive trust, which is a trust imposed by a court, usually against the intention of the property holder. *Id.*

trusts, because their primary purpose is "to hold and conserve particular property." 13 AM. JUR. 2D *Business Trusts* § 6; *Morrissey*, 296 U.S. at 357; *see* RESTATEMENT (THIRD) OF TRUSTS § 2, cmt. a (2003).

Since at least the 1800s, trusts also have been used as vehicles for conducting business. *See* Robert H. Sitkoff, *Uncorporation: A New Age?: Trust as "Uncorporation": A Research Agenda*, 2005 U. ILL. L. REV. 31, 32 (2005). In 1929, it was observed that "modern business has become honey-combed with trusteeship. Next to contract, the universal tool, and incorporation, the standard instrument of organization, it takes its place wherever the relations to be established are too delicate or too novel for these coarser devices." Nathan Isaacs, *Trusteeship in Modern Business*, 42 HARV. L. REV. 1048, 1060-61 (1929). Depending on the applicable State's law, a business trust can be governed by common law, or predominantly by statute, as are real estate investment trusts (REITs) such as Americold. *See* Thomas E. Rutledge & Ellisa O. Habbart, *The Uniform Statutory Trust Entity Act: A Review*, 65 BUS. LAW. 1055 (2010).

To understand the trust's place within the framework of the Court's diversity jurisdiction jurisprudence, it is necessary to examine the history and essential attributes of the different types of "trusts."

A. Born in Equity, a Traditional Trust is a Fiduciary Relationship with Respect to Property, Not an Artificial Entity Under State Law

"The trust owes its peculiar character to the more or less accidental circumstance that in England in the fifteenth century, and for four hundred years thereafter, there were separate courts of law and equity. But for this, the trust, at least as we know it, would never have developed." 1 SCOTT *ET AL.*, *supra* p.7, § 1.1; *see also* Isaacs, *supra* p.8, at 1049 ("What distinguishes the Anglo-American trust is the peculiar framework of law and equity as separate systems in the administration of justice that has enabled the English law to conceive of the trustee as having a legal title and the beneficiary as having a standing only in a court of equity.")

After the Norman Conquest of 1066, England became dominated by a feudal system whereby the King held absolute dominion over the land in the Kingdom, and his subjects could hold land only as tenants of the King or under-tenants, upon condition that they perform feudal services to their overlord. *See* Fratcher, *supra* n.3, § 11-8. As late as the sixteenth century, "[l]long after the feudal system lapsed, burdensome feudal landholding rules endured," John H. Langbein, *The Contractarian Basis of the Law of Trusts*, 105 YALE L.J. 625, 633 (1995), typified by restrictive inheritance laws including the law of primogeniture and mandates that the decedent's property must pass by escheat, *i.e.*, revert back, to the overlord if there was no living relative eligible to succeed as an heir, Fratcher,

supra n.3, § 11-8. Moreover, until the Statute of Wills was enacted in 1540, "[r]ural land could not be devised by will, so the tenant was unable either to avoid escheat by this means or to make provision for his wife, his parents or his daughters and younger sons." *Id.*

From under the weight of these burdensome feudal laws arose the concept of the "use," which landholders employed "to protect themselves and their families against the gross injustices of a system of land law which was centuries out of date[.]" *Id.* § 11-9. Uses could be passive—where the "foeffer" conveyed property to the "foeffee," who merely held legal title to the property for the "use" of the *cestui que use*; or they could be active, which required the foeffee to manage the property for the benefit of the *cestui que use*. *See* 1 AMY M. HESS, GEORGE G. BOGERT & GEORGE T. BOGERT, *The Law of Trusts and Trustees* § 2 (3d ed. 2007). An active use was called an active or special trust. *Id.*[4]

Uses and trusts originally were "merely honorary obligations, dependent upon the good faith of the foefee." 1 SCOTT ET AL., *supra* p.7, § 1.4. As the common law courts became increasingly rigid, though, refusing to enforce promises grounded solely

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[4] The Court has in the past referred to uses and trusts as being synonymous, *see Davis v. United States*, 495 U.S. 472, 484 (1990), but most legal historians agree that they were different devices and, although active trusts were relatively rare in medieval England, they "had existed from the inception of the use device," Fratcher, *supra* n.3, § 11-16. 1 HESS ET AL., *supra* p.10, § 2. Maitland suggested that active trusts arose for the purpose of managing land while the beneficiary was away on crusade. *See* Fratcher, *supra* n.3, § 11-16.

in honor, beneficiaries of uses and trusts began to petition the king for redress against "faithless foeffees." *See id.*, *supra* p.7, § 1.5; 1 HESS ET *AL.*, *supra* p.10, § 3. The King began to refer these petitions to the Chancellor, who was a member of the King's counsel, and by the end of the fourteenth century, the Chancellor had become "the custodian of the king's conscience, and his court became the court of conscience where equity and fairness, rather than technicality, were supposed to rule." 1 HESS ET *AL.*, *supra* p.10, § 3.

Eventually, uses "incurred the enmity of the crown," perhaps because of their predilection to be used as a vehicle for committing fraud, *id.* § 4, but more likely because they tended to decrease the landholdings of the nobility and the Crown. *See* 1 SCOTT ET AL, *supra* p.7, § 1.6. In 1535, Parliament, at the insistence of Henry VIII, passed the Statute of Uses, which effectively abolished uses by investing the legal estate in the *cestui que use*. *See id.* Most types of passive uses disappeared, but the English law courts, which had grown accepting of uses and trusts, interpreted the Statute narrowly to leave active trusts and certain types of passive uses outside of its reach. *See* Fratcher, *supra* n.3, § 11 16. These equitable interests that survived the Statute of Uses, which for centuries thereafter continued to be governed by the Chancellor's court of equity, became known as a "trust," and formed "the basis of modern trust law." 1 HESS ET AL., *supra* p.10, § 5.

Feudal property restrictions gradually disappeared from England, but the trust remained—because it "ceased to be a conveyancing device for

holding freehold land and has become instead a management device for holding financial assets." Langbein, *Contractarian Basis*, *supra* p. 9, at 637 This change arose as a response to the "radical" shift "away from family real estate as the dominant form of wealth." *Id.* "'Wealth, in a commercial age, is made up largely of promises.'" *Id.* (quoting ROSCOE POUND, AN INTRODUCTION TO THE PHILOSOPHY OF LAW 236 (1922)). Thus the modern traditional trust was born.

While the history of the trust is well understood, a generally accepted definition of a traditional trust had eluded consensus for much of its history. Indeed, it has been stated that:

> [n]o definition of a trust appears to have been accepted as both comprehensive and exact. Strictly, the words refer to the duty or aggregate accumulation of obligations that rest upon a person described as a trustee. The responsibilities are in relation to property held by him or under his control. That property he will be compelled by a court in its equitable jurisdiction to administer in the manner lawfully prescribed by the trust instrument, or where there be no specific provision written or oral, or to the extent that such provision is invalid or lacking, in accordance with equitable principles. As a consequence, the administration will be in such a manner that the consequential benefits and

> advantages accrue, not to the trustee, but to the persons called *cestuis que trust*, or beneficiaries, if there be any, if not, for some purpose which the law will recognise and enforce.

LYNTON TUCKER, NICHOLAS LE POIDEVIN, & JAMES BRIGHTWELL, LEWIN ON TRUSTS 1-002 (19th ed. 2014) (quoting *Re Scott* [1948] S.A.S.R. 193, 196). *Cf.* H. ARTHUR SMITH, A PRACTICAL EXPOSITION OF THE PRINCIPLES OF EQUITY 22 (1882) ("A trust is a duty deemed in equity to rest on the conscience of a legal owner."); Walter G. Hart, *What is a Trust?*, 15 L. Q. REV. 294, 301 (1899) ("A trust is an obligation imposed either expressly or by implication of law whereby the obligor is bound to deal with property over which he has control for the benefit of certain persons of whom he may himself be one, and any one of whom may enforce the obligation."); Bernard Rudden, *John P. Dawson's Gifts and Promises*, 44 MOD. L. REV. 610, 610 (1981) (book review) ("[T]he normal private trust is essentially a gift, projected on the plane of time and so subjected to a management regime.").

Despite the absence of complete historical consensus, it is now generally accepted that a traditional trust may be defined as:

> a fiduciary relationship with respect to property, arising from a manifestation of intention to create that relationship and subjecting the person who holds title to the property to duties to deal with it for the benefit of charity or for

> one or more persons, at least one of whom is not the sole trustee.

RESTATEMENT (THIRD) OF TRUSTS § 2. Most significant for present purposes, however, is to recognize what a traditional trust is not:

> A trust is not a legal entity. A trust is not an entity distinct from its trustees and capable of legal action on its own behalf, but merely a fiduciary relationship with respect to property. A trust is not a legal 'person' which can own property or enter into contracts, rather, a trust is a relationship having certain characteristics.

76 AM. JUR. 2D *Trusts* § 3; 14 HESS ET AL., *supra* p.10, § 712 ("A trust is not a legal person."); *cf. Taylor v. Davis' Adm'x*, 110 U.S. 330, 334 (1884) ("The trust estate cannot promise[.]")

Numerous cases confirm that a trust is not an entity or a "person" in the eyes of the law and, therefore, lacks capacity to sue or be sued.[5] *See NFS Servs., Inc. v. Dorchester Trust*, 78 Civ. 4758, 1979 U.S. Dist. LEXIS 11052, at *4 (S.D.N.Y. July 13, 1979) ("A trust is not a legal entity and it does not

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[5] The terms "artificial entity," "artificial person," "legal entity," "legal person" and "juridical person" are synonymous in law. *See Marshall v. Balt. & Ohio R.R. Co.*, 47 U.S. (16 How.) 314, 327 (1854) (using the terms "artificial person," "legal entity" and "artificial entity" interchangeably when describing a corporation); BLACK'S LAW DICTIONARY 1258 (9th ed. 2009). (An "artificial person" is also known as a "juridical person" or a "legal person.").

have the capacity to be sued as a party defendant."); *Limouze v. M.M. & P. Maritime Advancement, Training, Educ. & Safety Program*, 397 F. Supp. 784, 789 (D. Md. 1975) (holding that "the weight of authority is clear that the trust estate is not a person in the eyes of the law and does not have the capacity to be sued as an entity"); *Plasteel Prods. Corp. v. Eisenberg*, 170 F. Supp. 100, 101 (D. Mass. 1959) (same), *aff'd*, 271 F.2d 354 (1st Cir. 1959); *N. Sec. Ins. Co. v. Doherty*, 987 A.2d 253, 256 (Vt. 2009) ("at common law, trusts are not independent legal entities with the capacity to sue or be sued"); *Jacobs v. Weinstein*, 370 S.E.2d 860, 865 (N.C. Ct. App. 1988) ("Neither a trust estate nor trust property are recognized as separate legal entities"), *review denied*, *Matter of Jacobs*, 373 S.E.2d 863 (N.C. 1988); *Larson v. Sylvester*, 185 N.E. 44, 45 (Mass. 1933) ("[A] trust is not a legal personality" and, with very limited exceptions, "cannot be sued."). Nor does state statutory law say otherwise. Although many States have adopted statutes that govern the affairs of traditional trusts,[6] "[n]o state has gone so far as to provide by statute that trusts should enjoy entity status." Erin C.V Bailey, *Asset Protection Trusts Protect the Assets*, 21 PROBATE & PROP. 58, 59 (2007). It is, thus, clear that under the common law and the laws of the Several States, a traditional trust is not

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[6] *See* Carol Warnick, *Uniform Trust Code A Time for Colorado*, THE NAT'L L. REV. (Sept. 1, 2015), http://www.natlawreview.com/article/uniform-trust-code-time-colorado (noting that the Uniform Trust Code has been adopted in 31 states (including the District of Columbia) as of September 1, 2015).

an entity or a person in the eyes of the law, and is not subject to suit.[7]

B. Most Modern Statutory Trusts, Including Americold, Are Separate Legal Entities Under State Law

There has been a trend over the last quarter century for States to enact legislation authorizing the creation of new types of "statutory trusts." *See* Sitkoff, *supra* p.8, at 35-36, n.22. This began in 1988 when Delaware passed the Delaware Business Trust Act, which was renamed the Delaware Statutory Trust Act in 2002. *See* Del. Code Ann. tit 12, §§ 3801-3863 (2015). Statutory trusts grew out of the business trust, also known as a "common law trust" or a "Massachusetts trust" because of its prevalence and origination in that State. *See* Sitkoff, *supra* p.8, at 32-33.[8]

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[7] Although a traditional trust lacks capacity to sue or be sued under state law, it nevertheless may be caught in the crosshairs of a dispute invoking diversity jurisdiction, either because no party raises an objection to the trust's capacity and the objection is thereby waived, *see First Union Nat'l Bank v. Pictet Overseas Trust Corp., Ltd.*, 351 F.3d 810, 815 (8th Cir. 2003), or because a traditional trust is considered to be a "member" of an artificial entity, such as a limited liability company, that is a party to a suit, *see Thales Alenia Space Fr. v. Thermo Funding Co., LLC*, 989 F. Supp. 2d 287, 290-91 (S.D.N.Y. 2013).

[8] The Massachusetts business trust evolved from the traditional trust. Tamar Frankel, *The Delaware Business Trust Act Failure as the New Corporate Law*, 23 CARDOZO L. REV. 325, 325 (2001). The primary purpose of a business trust, however, is not to conserve property, but rather to make a profit and to serve as "a vehicle for the conduct of commercial

In 2009, in an effort to create a uniform set of rules governing statutory trusts, the National Conference of the Commissioners on Uniform State Laws approved the Uniform Statutory Trust Entity Act ("USTA"). The USTA has been adopted by Kentucky and the District of Columbia. *See* Ky. Rev. Stat. Ann. § 386A.1-010 *et seq.* (LexisNexis 2015); D.C. Code § 29-1201.01 *et seq.* (2015).[9] The USTA, like the Delaware Statutory Trust Act and most other modern statutory trust codes, classify a statutory trust as a separate legal entity. *See* USTA § 302; Del. Code Ann. tit. 12, § 3810(a)(2). As such, the statutory trust is endowed with certain characteristics, including the capacity to sue and be sued, to own and convey property, and to transact in its own name. USTA § 302, cmt. Petitioner Americold, which was formed under the Maryland REIT Law, is a distinct legal entity. Md. Code Ann., Corps. & Ass'ns § 8-102 (LexisNexis 2015).

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enterprise." Herbert B. Chermside, Jr., *Modern Status of the Massachusetts or Business Trust*, 88 A.L.R.3d 704 § 2 (2009). Some states view the common law trust as a legal entity, but many, including Massachusetts, do not. *See id.* § 4 (collecting cases and statutes); *Peterson v. Hopson*, 29 N.E.2d 140, 149 (1940) (noting that a Massachusetts business trust may be sued under Mass. Gen. Laws ch. 182, § 6, but nevertheless is not a separate legal entity).

[9] *See* UNIFORM LAW COMM'N, *Acts: Statutory Trust Entity Act*, http://www.uniformlaws.org/Act.aspx?title=Statutory%20Trust%20Entity%20Act (last visited Nov. 29, 2015).

II. THE COURT SHOULD HOLD THAT DIVERSITY JURISDICTION IN A SUIT BY OR AGAINST A TRADITIONAL TRUST IS DETERMINED BY THE CITIZENSHIP OF ITS TRUSTEE

Under the Court's precedents, diversity of citizenship in a suit by or against a traditional trust should be determined by the citizenship of its trustee alone; the domicile or "'residence of those who may have the equitable interest' is simply irrelevant." *Navarro*, 446 U.S. at 463 (quoting *Bonnafee v. Williams*, 44 U.S. (3 How.) 574, 577 (1845)).

While *amicus* concurs with Petitioners' conclusion as to the "citizenship" of all trusts, including traditional trusts, Petitioners' formulation of the Question Presented requires some refinement because it presumes, at least facially, that a trust is a "citizen" of a State, and then asks the Court to determine how the trust's "citizenship" is determined. *Cf. Carden*, 494 U.S. at 187 n.1 ("The dissent reaches a conclusion different from ours primarily because it poses, and then answers, an entirely different question. It 'do[es] not consider' 'whether the limited partnership is a "citizen,"' but simply 'assum[es] it is a citizen[.]'") (citation omitted). Notwithstanding the wording of the Question Presented, Pet'rs' Brief at i, no party to this appeal in fact contends that a "trust" should be afforded citizenship in its own right for purposes of diversity jurisdiction. *See* Pet'rs' Brief 8-9. Properly framed, though, the question before the Court is, in fact, two fold: first, whether a "trust" is a "citizen" of a State in its own right for purposes of diversity

jurisdiction; and second, if a "trust" is not a "citizen," then *whose* "citizenship" – the trustees, the beneficiaries or both – determines whether there is diversity of citizenship among the parties in a suit by or against a trust. *See Carden*, 494 U.S. at 188 n.1.[10]

A. A Trust Is Not a "Citizen" of a State in Its Own Right

A trust is not a "citizen" of a State in its own right for purposes of diversity jurisdiction. Because traditional trusts and most common law business trusts are not distinct legal entities under state law, they cannot in any logical sense be deemed a "citizen" of a State under the diversity statute. *Cf. Moor v. County of Alameda*, 411 U.S. 693, 719 (1973) (rejecting the State of California's argument that a county of the State is not a "citizen" for purposes of diversity jurisdiction because, under California law, a county has "'corporate powers'," "is designated a 'body corporate and politic,'" has capacity to sue and be sued, may hold and convey property, may enter into contracts and, "significantly for purposes of suit, it is deemed to be a 'local public entity'"); *Barham v. Toney*, No. CIV-14-388, 2015 U.S. Dist. LEXIS 107331, at *7 (E.D. Okla. Aug. 17, 2015) (stating that an Oklahoma limited liability company which

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[10] The Court foreshadowed the first of these questions in *Carden*, 494 U.S. 185. In the course of discussing its decision in *Navarro*, the *Carden* Court explained that in *Navarro*, "we did indeed discuss the characteristics of a Massachusetts business trust -- not at all, however, for the purpose of determining *whether the trust had attributes making it a 'citizen*[.] '" *Carden*, 494 U.S. at 191 (emphasis added).

"cease[d] to exist as a legal entity" when its articles of organization were cancelled "has no citizenship for diversity purposes"); *compare id. with Go Fast Sports & Bev. Co. v. Buckner*, No. 08-cv-01527, 2008 U.S. Dist. LEXIS 65754, at *4-5 (D. Colo. July 23, 2008) (holding that "[a]dministrative dissolution of a perpetual LLC d[id] not destroy its citizenship for diversity purposes" because "the LLC continue[d] to exist under [Colorado] state law after administrative dissolution" in order to wind up its affairs). Indeed, a traditional trust—and a common law business trust to the extent that it is not deemed an entity by applicable state law—is no more a "citizen" of a State than is a contract. *Cf.* Langbein, *Contractarian Basis*, *supra* p.9, at 627 ("Trusts are contracts.").[11]

B. The *Carden* Rule to Determine Citizenship Applies Only to Artificial Entities That Are Creatures of and Exist Under State Law, Not to Traditional Trusts

Given that a trust is not a "citizen" of a State, the question that remains is whose citizenship must be consulted in determining whether diversity jurisdiction exists when a "trust" is a party to a suit? Although few courts have distinguished between traditional trusts and statutory or business trusts

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[11] *Amicus* concurs with the parties' conclusion that a REIT, such as Americold, and any other statutory or business trust that is a legal entity under state law, also does not possess "citizenship" in its own right, but defers to their discussion of the issue.

for purposes of diversity jurisdiction,[12] it is critical to account for their differences in analyzing the citizenship question.

In attempting to determine the "citizenship of a trust," the lower courts have split over the proper reconciliation of the Court's decisions in *Navarro*, 446 U.S. 458, and *Carden*, 494 U.S. 185. In *Navarro*, the Court held that "a trustee is a real party to the controversy for purposes of diversity jurisdiction when he possesses certain customary powers to hold, manage, and dispose of assets for the benefit of others." 446 U.S. at 464. In *Carden*, the Court held that diversity jurisdiction in a lawsuit by or against an artificial entity (other than a corporation) depends on the citizenship "of all the entity's members." 494 U.S. at 195.

The majority of lower courts that have addressed this issue have relied on *Navarro* in holding that the "citizenship of a trust" is determined by the citizenship of its trustee(s). Pet. for Writ of Cert. 19-21 (collecting cases). A minority of courts, though, including the court below, have looked to *Carden* and held that "[t]he citizenship of a trust, just like the citizenship of all other artificial

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[12] This distinction was recognized by the district court in *Thales*, 989 F Supp. 2d 287. Many of the courts that took the minority position, however, have relied on the United States Court of Appeals for the Third Circuit' decision in *Emerald Investors Trust v. Gaunt Parsippany Partners*, which stated that "[o]ur research has not led us to conclude that the type of trust calls for a difference in treatment when determining a trust's citizenship for diversity of citizenship jurisdictional purposes." 492 F.3d 192, 198 n.10 (3d Cir. 2007). For the reasons discussed herein, this conclusion was simply wrong.

entities except corporations, is determined by examining the citizenship 'of all the entity's members[,]'" *Conagra Foods*, 776 F.3d at 1176 (quoting *Carden*, 494 U.S. at 195); *see* Pet. for Writ of Cert. 27-33 (collecting cases). Those courts, including the Tenth Circuit which relied heavily on the Third Circuit's decision in *Emerald Investors Trust v. Gaunt Parsippany Partners*, 492 F.3d at 200-02, concluded that the "members" of a trust included, at a minimum, all of the trust's beneficiaries. *See Conagra*, 776 F.3d at 1181-82.

The fundamental flaw in the minority courts' diversity analysis is that they assumed, incorrectly, that all trusts are "artificial entities" under state law. *See Emerald Investors Trust*, 492 F.3d at 202, 203 (concluding, without analysis, that an "artificial entity" is "a term that we will treat as including a trust"). But *Carden* is inapplicable to traditional trusts since, as discussed above, *see supra* Section I.A, a traditional trust is not an "artificial entity" under state law.

The plaintiff in *Carden*, a limited partnership organized under the laws of Arizona, brought suit in federal district court on the basis of diversity jurisdiction. 494 U.S. at 186. The limited partnership argued that, like a corporation, it was a "citizen" of its state of formation for purposes of diversity jurisdiction or, alternatively, that its "citizenship" should be determined only by reference to the citizenship of its general partners. *See* Brief of Resp't at 33, *Carden*, 494 U.S. 185 (No. 88-1476). Although the Court denied the limited partnership the status of a "citizen" of a State in its own right for

purposes of diversity jurisdiction, *see Carden*, 494 U.S. at 190, the limited partnership's existence as a separate legal entity under Arizona law was critical to the Court's analysis. The Court explained that:

> [w]e have often had to consider the status of *artificial entities created by state law* insofar as that bears upon the existence of diversity jurisdiction. The precise question posed under the terms of the diversity statute is whether such an entity may be considered a "citizen" of the *State under whose laws it was created.*

Id. at 187 (emphasis added). The question in *Carden*, therefore, was how to determine the citizenship of an *entity that was created under state law*. *Carden* does not speak to the very different question of determining the citizenship of a fiduciary relationship – such as a traditional trust – that is *not* an entity under state law. The plain language of the *Carden* opinion confirms this.

First, the Court framed the scope of the issue by looking at the historical treatment of a corporation formed under state law: "[a] corporation is the paradigmatic *artificial 'person,'* and the Court has considered its proper characterization under the diversity statute on more than one occasion. " *Id.* at 187-88 (emphasis added). Thus, *Carden* was but one in a long line of cases addressing the citizenship of different types of "artificial 'person[s]'," *id.*, and its task was to determine the citizenship of yet another kind of artificial person, *i.e.*, a formal entity created

by state law and endowed by that law with certain legal rights, privileges and duties, *see Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 667-68 (1819) (Story, J., concurring); BLACK'S LAW DICTIONARY 1258.

Second, the Court defined the scope of its holding through its reliance on earlier cases addressing the citizenship of new "artificial 'persons'" or "entities" other than corporations. *Carden*, 494 U.S. at 188-189. The Court explained that "[w]hile the rule regarding the treatment of corporations as 'citizens' has become firmly established, we have just as firmly resisted extending that treatment to other entities." *Id.* at 189. It then described a trilogy of cases where it refused to apply the corporation rule for citizenship to other legal entities created under state law, and instead held that diversity of citizenship by or against those entities must be determined by the citizenship of their members. *See id.*

In *Chapman v. Barney*, the Court held that even though a joint stock company was organized under a law of the State of New York and was a citizen of that State, it "cannot be a citizen of New York, within the meaning of the statutes regulating jurisdiction, unless it be a corporation." 129 U.S. 677, 682 (1889). Similarly, in *Great Southern Fire Proof Hotel Company v. Jones*, the Court held that although a "limited partnership association" may be described as a "'new artificial person'" possessing "some of the characteristics of a corporation" and was deemed a "citizen" by the Pennsylvania law under which it was created, it could not be regarded

"as a corporation within the jurisdictional rule" for diversity. 177 U.S. 449, 456, 457 (1900). The Court stated emphatically that "[t]hat rule must not be extended." *Id.* at 457. And, in *United Steelworkers of America v. R.H. Bouligny, Inc.*, 382 U.S. 145, 153 (1965), a case involving the citizenship of a national labor union whose existence as a juridical person had been recognized under state (and federal) law, *see United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 385-388 (1922), the Court again "reiterated that 'the doctrinal wall of Chapman v. Barney[]' . . would not be breached." *Carden*, 494 U.S. at 189 (quoting *R.H. Bouligny*, 382 U.S. at 151). In each of these cases, the Court refused to treat the artificial persons at issue like corporations, and instead held that the citizenship of their members controlled the diversity analysis.

Summarizing the central holding of the trilogy, the *Carden* Court emphasized that "*common-law entities*," *i.e.*, entities that found their origins in the common law, "would be treated *for purposes of the diversity statute* pursuant to the 'tradition of the common law,' which is 'to treat as legal persons only incorporated groups and to assimilate all others to partnerships.'" *Carden*, 494 U.S. at 190 (emphasis added) (quoting *Puerto Rico v. Russell & Co.*, 288 U.S. 476, 480 (1933)). And at common law, before the enactment of various state statutes creating new artificial legal entities such as the limited partnership, only corporations had formal charters establishing their existence as separate entities under law, whereas partnerships were "mere collections of individuals," *Navarro*, 446 U.S. at 461, *see Riddle v. Whitehill*, 135 U.S. 621, 633-34 (1890)

("A partnership, as such, could not hold the legal title to real estate, as it is not a person in fact or in law"; rather, "'[i]f the title be made to all the partners by name, they hold the legal title as tenants in common, without survivorship.'") (internal citation omitted); *see also Fidelity Trust Co. v. BVD Assocs.*, 492 A.2d 180, 182-83 (Conn. 1985) (explaining that at common law a partnership was not a legal entity but rather "an aggregate of individuals[,]" and the partners were tenants in common of firm property).

Thus, it was by analogy to this common law tradition that the Court erected the "the doctrinal wall of Chapman v. Barney," *R.H. Bouligny*, 382 U.S. at 151. The "doctrinal wall" was created, *solely for purposes of the diversity statute*, to determine the citizenship of formal legal entities that did not exist as separate legal or artificial "persons" at common law. Indeed, there was no need for the Court to even consider this issue until these new "artificial persons" were created by statute. Before this each of the individual members of the partnership would have been required to join or be joined in the suit. *See United Mine Workers*, 259 U.S. at 385.

Third, the *Carden* Court confirmed that its holding addressed only formal entities created under state law when it rejected the dissent's effort to extrapolate from *Navarro* a "'real party to the controversy approach'" which would have required that the citizenship of the limited partnership be determined solely by the citizenship of the partners who had "'control over the conduct of the business and the ability to initiate or control the course of

litigation[.]'" *Carden*, 494 U.S. at 193 (quoting *id.* at 201, 204 (O'Connor, J., dissenting)). The Court stated that "[t]here are *not*, as the dissent assumes, multiple respondents before the Court, but only *one*: the artificial entity called Arkoma Associates, a limited partnership." *Id.* at 188 n.1. *Navarro*, the Court wrote, "is irrelevant, since it involved *not a juridical person* but the distinctive common-law institution of trustees." *Id.* at 194 (emphasis added). Thus, *Carden*'s holding applies only to artificial entities, juridical persons, artificial persons, formal legal entities created and existing under state law. *See id.* at 195.

The United States Court of Appeals for the Second Circuit has, appropriately, recognized the limits of *Carden*'s reach, explaining that "*Carden*'s express language applies only to 'artificial entities created by state law[,]'" and observing that it was "not by chance" that the Court "emphasized the importance of the existence of such an artificial entity [under state law] in its holding that every limited partner must have diverse citizenship." *E.R. Squibb & Sons, Inc. v. Accident & Cas. Ins. Co.*, 160 F.3d 925, 937 (2d Cir. 1998) (quoting *Carden*, 494 U.S. at 187). Indeed, it was not by chance, but rather a matter of constitutional proscription; that is, the federal courts are powerless to create—and thereby accord certain rights and privileges to—artificial entities, that, under our system of federalism, can owe their existence only to the laws of the States, for "such power as federal courts possess to interpret and apply state law is, at best, a negative power or, perhaps more properly, a badge of weakness, arising as it does from the fact that such

courts lack constitutional authority to create a broad body of common law." *In re General Motors Corp. Dex-Cool Prods. Liability Litig.*, 241 F.R.D. 305, 321 (S.D. Ill. 2007) (citing "the rarely-noted constitutional basis for the *Erie* doctrine").

As the Court stated long ago in *Erie Railroad Co. v. Tompkins*, "[e]xcept in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State." 304 U.S. 64, 78 (1938). The reason, the Court explained, is that:

> Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.

Id. *Erie* "recognized that the scheme of our Constitution envisions an allocation of law-making functions between state and federal legislative processes which is undercut if the federal judiciary can make substantive law affecting state affairs beyond the bounds of congressional legislative powers[.]" *Hanna v. Plumer*, 380 U.S. 460, 474-75 (1965) (Harlan, J., concurring). Simply put, a federal court sitting in diversity "cannot give that which [the State] has withheld." *Angel v. Bullington*, 330 U.S. 183, 192 (1947).

Had the Court extended its holding in *Carden* to include relationships or associations that have no separate existence as artificial entities under state law, it would have implicitly authorized the federal courts to recognize the legal existence of an artificial entity without regard to, or even despite, the governing State's decision not to accord entity status to such relationships or associations.[13] Such an exercise of power by the federal courts would offend not only Rule 17(b) of the Federal Rules of Civil Procedure and the Rules Enabling Act, but more significantly, the Constitution and the system of federalism on which our Government was founded. *See Law v. NCAA*, 167 F.R.D. 464, 475, 475 n.18 (D. Kan. 1996) (stating that "even though the NCAA is properly subject to suit in its own name under Rule 17(b), it otherwise has no status or legal existence which is distinct from the members which compose it[,]" and explaining that "[g]enerally, state law determines whether unincorporated associations have legal existence" and "[a]ny discrepancy between

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[13] Of course, under *Erie*, federal courts sitting in diversity must "apply state substantive law and federal procedural law." *Hanna*, 380 U.S. at 465. "While the authority on the point is slim -- perhaps because the answer to the question is obvious -- " legal existence is a question of substantive law. *Roby v. The Corporation of Lloyd's*, 796 F. Supp. 103, 111 (S.D.N.Y. 1992) (explaining that "[c]apacity to be sued and legal existence are separate and distinct concepts," and while both "are prerequisites to the suability of an entity," capacity is a procedural matter governed by Fed. R. Civ. P. 17(b) whereas "[l]egal existence is a substantive proposition that cannot be controlled by a rule of procedure"); *see Busby v. Elec. Utils. Emps. Union*, 323 U.S. 72, 77 (1944) (Frankfurter, J., concurring) (distinguishing between "suability" and legal "status," recognizing that the former is a "procedural matter" while the latter is a "substantive issue").

state law and federal practice raises potential problems with respect to *Erie*"); *Nat'l Bank of Washington v. Mallery*, 669 F. Supp. 22, 26 (D.D.C. 1987) (reasoning that "[i]f the Court were to treat a suit against the partnership class as if it were a suit against" a single artificial entity, "despite the District of Columbia's decision to deny the partnership the status of a jural person," it "would effectively negate the District's decision not to extend entity treatment to the partnership. Both Rule 17(b) and the commands of the *Erie* doctrine forbid this denigration of the laws of the sovereign states[.]").[14] *Carden* did not sanction such a course.

Thus, under the express language of *Carden*, as informed by the *Erie* doctrine, the "all the members" rule for artificial entities does not apply in

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[14] Although *Coronado Coal*, 259 U.S. at 390, clarified long ago that capacity to sue is a procedural rather than a substantive matter, it has been argued that Rule 17(b), which governs capacity to sue or be sued in federal court, implicitly recognizes the limits *Erie* placed on the federal courts by deferring to state law to determine capacity except in suits to enforce substantive rights existing under the Constitution or federal law—perhaps for the simple reason that capacity to sue is so often inextricably intertwined with legal existence. *See NCAA*, 167 F.R.D. at 474 n.16 ("Rule 17(b) provides that in diversity cases, state law determines the association's capacity to sue or be sued. A contrary rule would arguably offend the principle of *Erie*[.]"). It may be more properly argued that Rule 17(b) recognizes the limits placed upon the Court by the Rules Enabling Act, 28 U.S.C. § 2072(b), and the constitutional principles underpinning it, *see Hanna*, 380 U.S. at 465-66, 470-71, though this may be a distinction without a difference in this context, because the *Erie* doctrine is informed by both the Rules of Decision Act, 28 U.S.C. § 1652, *and* the Rules Enabling Act, *see Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 438-39 (2010) (Ginsburg, J., dissenting).

diversity cases by or against a traditional trust or common law business trust that is not a legal entity under state law.

C. *Navarro* Controls the Diversity Analysis for a Traditional Trust

Under *Navarro*, 446 U.S. 458, the trustee of a common law trust who has customary powers to hold, manage and dispose of the trust assets is the real party to the controversy and a traditional trust is a nominal party whose "citizenship" must be disregarded for purposes of determining diversity jurisdiction. "Early in its history, this Court established that the 'citizens' upon whose diversity a plaintiff grounds jurisdiction must be real and substantial parties to the controversy." *Id.* at 460. It is axiomatic that "a federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy." *Id.* at 461.

By any measure, a traditional trust, which is not a legal entity under state law and does not and cannot own anything, is a nominal party to an action. *Cf. Barham*, 2015 U.S. Dist. LEXIS 107831, at *7 ("[A] non-existent entity is effectively a nominal party that was not required to join in the removal of this action.") Thus, a traditional trust's "citizenship" must be disregarded in favor of the real party to the controversy. *See Navarro*, 446 U.S. at 461.

Navarro makes clear that a trustee who holds customary powers over the trust assets is the real

party to the controversy in a suit involving the trust property. *Id.* at 464. The trustee of a traditional trust holds legal title to the trust corpus and, in almost all circumstances, possesses such customary powers. *See, e.g., Wahl v. Schmidt*, 138 N.E. 604, 606 (Ill. 1923). Even if a traditional trust is named a party to the suit, it is the trustee who is the real party to the controversy, and the trustee's citizenship alone determines whether there is diversity of citizenship. Indeed, "[t]he Court never has analogized express trusts to business entities for purposes of diversity jurisdiction." 446 U.S. at 463 n.10. Rather, when someone speaks of a traditional "trust" as a party to a suit, what he really means is "the distinctive common-law institution of trustees," *Carden*, 494 U.S. at 194; *see Plasteel Prods.*, 170 F. Supp. at 101 ("[O]f course, a trust estate is not a legal entity and cannot become a party to anything. Doubtless what the parties mean is that they feel the Agreement purported to make the trustees partners in their representative capacities only[.]").

D. Practical Considerations Dictate That Diversity of Citizenship in a Suit by or Against a Traditional Trust Must Be Determined by the Citizenship of the Trustee

Practical considerations also mandate that diversity of citizenship by or against a traditional trust must be determined solely by reference to the citizenship of its trustee. Chief among them is that the beneficiaries of a traditional trust often are not actual persons or entities whose citizenship can be determined under any traditional test for diversity

jurisdiction. For instance, a trust may be declared for the benefit of charitable purposes. *See, e.g.*, D.C. Code § 19-1304.05 (2015). While a "purpose" plainly does not possess any "citizenship," the question arises, which past, present or theoretical future recipients of distributions from the trust should be deemed present beneficiaries for purposes of the diversity statute? If a charitable organization received a one-time distribution in 2006, and never since, is that charity a beneficiary for purposes of the diversity analysis? What if the decision was made by the trustee that the charity would never again receive a distribution? What if the decision as to whether to provide another distribution to that charity is contingent upon the occurrence of some future event? *Cf. Thales*, 989 F. Supp. 2d at 290-91 n.1 (referencing a Colorado statute that defines a beneficiary of a trust to include "'a person who has any present or future interest, vested or contingent'") (quoting Colo. Rev. Stat. § 15-10-201(5) (2013)). Moreover, the declaration of trust of a traditional trust may provide for an open class of beneficiaries, whose ranks not only may change from moment to moment, but also may be uncertain at any given moment in time.

The practical difficulties of determining the citizenship of beneficiaries of a traditional trust, which may include such abstract recipients as charitable purposes or an heir who has not yet been, and may never be, born, raise prudential concerns which demand that diversity jurisdiction in a suit by or against a traditional trust be determined solely by reference to the citizenship of its trustee. The Court has said that "'[j]urisdiction should be as self-

regulated as breathing; litigation over whether the case is in the right court is essentially a waste of time and resources.'" *Navarro*, 446 U.S. at 464-65 n.13 (quoting David P Currie, *The Federal Courts and the American Law Institute, Part I*, 36 U. CHI. L. REV. 1 (1968)). To attempt to determine which beneficiaries—real or abstract, past or future, actual or potential—should be included as "members" of a trust for purposes of diversity jurisdiction, and how *their* citizenship should be determined, are "questions whose complexity are particularly unwelcome at the threshold stage of determining whether a court has jurisdiction[,]" *Carden*, 494 U.S. at 197.

CONCLUSION

For the foregoing reasons, *amicus* respectfully submits that in a diversity suit by or against a trust, diversity of citizenship should be determined by the citizenship of the trustee. Should the Court reach a different conclusion in this case, though, it should issue a narrow holding that sets forth a rule for diversity jurisdiction only with respect to the specific type of trust at issue in this case, a statutory business trust that is a distinct legal entity under the laws of the State by which it was created, and the Court should hold that in a diversity suit by or against a traditional trust, diversity of citizenship is determined by the citizenship of its trustee.

Respectfully submitted,

MARK W STOUTENBURG
Counsel of Record
STEPHEN T. HEISER
O'REILLY STOUTENBURG
RICHARDS LLP
32 East 57th Street
New York, N.Y. 10022
(212) 419-9880
mark@osrlaw.com

DANIEL S. WEINBERGER
GIBBONS P.C.
One Pennsylvania Plaza,
37th Floor
New York, N.Y. 10119
(212) 613-2000
dweinberger@
gibbonslaw.com

November 30, 2015